

PUBLIC COPY

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

M

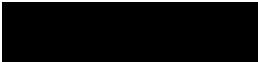
U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536



U.S. Citizenship
and Immigration
Services



FILE:

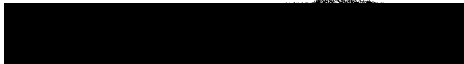


Office: Texas Service Center

Date: APR 08 2004

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration
and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director of the Texas Service Center. The case was subsequently reopened on motion at the Texas Service Center and the decision of the director was not reversed. The case is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254. The director denied the application because the applicant failed to establish he had continuously resided in the United States since February 13, 2001.

On appeal, the applicant asserted his claim of eligibility for TPS and submitted evidence in support of his claim.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an applicant who is a national of a foreign state is eligible for temporary protected status only if such alien establishes that he or she:

- (a) is a national of a state designated under section 244(b) of the Act;
- (b) has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) has continuously resided in the United States since such date as the Attorney General may designate;
- (d) is admissible as an immigrant under section 244.3;
- (e) is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) registers for TPS during the initial registration period, or
 - (2) registers for TPS during any subsequent extension of such designation, if the applicant meets the above listed requirements and:
 - (i) the applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) the applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;
 - (iii) the applicant is a parolee or has a pending request for reparole; or
 - (iv) the applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

The phrase continuously physically present, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

The phrase continuously resided, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The phrase brief, casual, and innocent absence, as defined in 8 C.F.R. § 244.1, means a departure from the United States that satisfies the following criteria:

- (1) Each such absence was of short duration and reasonably calculated to accomplish the purpose(s) for the absence;
- (2) The absence was not the result of an order of deportation, an order of voluntary departure, or an administrative grant of voluntary departure without the institution of deportation proceedings; and
- (3) The purposes for the absence from the United States or actions while outside of the United States were not contrary to law.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

The burden of proof is upon the applicant to establish that he or she meets the above requirements. Applicants shall submit all documentation as required in the instructions or requested by Citizenship and Immigration Services (CIS). 8 C.F.R. § 244.9(a). The sufficiency of all evidence will be judged according to its relevancy, consistency, credibility, and probative value. To meet his or her burden of proof the applicant must provide supporting documentary evidence of eligibility apart from his or her own statements. 8 C.F.R. § 244.9(b).

The applicant submitted the following documentation along with his initial application for TPS received on September 6, 2002:

1. A copy of his birth certificate from El Salvador in Spanish along with an English translation.
2. An original Certificate of Record Search dated July 16, 2002 from the District Clerk in Harris County, Texas.

3. A letter from [REDACTED] pastor of the Canaan Evangelic Church in Houston, Texas, who testified that the applicant had been a member of the church since January 2001.
4. An affidavit from an acquaintance, Mr. [REDACTED] who attested that he had known the applicant since December 2000.
5. An affidavit from his aunt, Ms. [REDACTED] who testified that the applicant had been in Houston since December 2000.
6. An affidavit from his uncle, Mr. [REDACTED] who testified that the applicant had been in Houston since December 2000.
7. Copies of the applicant's Certificates of Completion from the Katy Independent School District, Texas, dated June 21, 2001, December 19, 2001, May 15, 2002, and June 27, 2002.

On January 28, 2003, the applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The notice requesting the evidence, although sent to the applicant's most recent address, appears to have been returned by the U.S. Postal Service. The director determined that the applicant had abandoned his application and denied the application on March 10, 2003.

On April 1, 2003, the applicant requested that the director reopen the proceedings because he claimed he had never received the notice requesting additional evidence.

On April 15, 2003, the director reopened the proceedings. The applicant was requested to submit evidence establishing his residence since February 13, 2001, and physical presence since March 9, 2001, in the United States. The applicant was also requested to submit evidence verifying his identity.

In response, the applicant submitted the following documentation:

8. Original receipts for money grams sent on September 12, 2001 and October 22, 2001.
9. A copy of the applicant's personal identification document (i.e., Cedula) from El Salvador.
10. Copies of receipt notices from the Immigration and Naturalization Service dated October 11, 2002 and April 3, 2003.
11. An affidavit from an acquaintance, Ms. [REDACTED] who testified that she had known the applicant since December 2000.
12. An affidavit from an acquaintance, Mr. [REDACTED] who testified that he had known the applicant since December 2000.
13. An affidavit from an acquaintance, Mr. [REDACTED] who testified that he had known the applicant since December 2000.
14. Original money transfer receipts dated July 5, 2001, December 21, 2001, May 4, 2002, November 18, 2002, May 5, 2003, and May 19, 2003 from BancoSal, Inc.
15. An original receipt dated May 23, 2001.
16. A receipt from the Envios Urgentes Courier Service dated August 14, 2001.
17. The applicant's Internal Revenue Service (IRS), Form W-2, Wage and Tax Statement, for the year 2001 from Ikaros, Inc., in Stafford, Texas.
18. Paycheck stubs from Ikaros, Inc., dated May 18, 2001, June 1, 2001, and June 15, 2001.

19. Correspondence received by the applicant dated November 19, 2001 and November 12, 2001.
20. The applicant's wireless telephone bill from Sprint dated August 5, 2002.
21. The applicant's automobile insurance bill from Allstate dated February 3, 2003.
22. A copy of a letter from Allstate confirming a change in the applicant's policy effective July 24, 2002.

The applicant also resubmitted copies of the evidence detailed in Nos. 4, 5, and 6. The director determined that the applicant had failed to submit sufficient evidence establishing his residence since February 13, 2001, and denied the application on June 11, 2003. On appeal, the applicant reasserted his claim and submitted the following documentation:

23. An affidavit dated July 3, 2003, from [REDACTED] who testified that the applicant had resided in Houston, Texas, since January 2001.

The applicant also resubmitted a copy of No. 3 as detailed above. The affidavit from [REDACTED] pastor of the Canaan Evangelic Church in Houston, Texas, has little evidentiary weight or probative value as it does not provide basic information that is expressly required by 8 C.F.R. § 244.9(a)(2)(v). Specifically, the pastor does not explain the origin of the information to which he attests, nor does he provide the address where the applicant resided during the period of his involvement with the church.

Further, the statements in Nos. 4, 5, 6, 11, 12, and 13 above, regarding the applicant's claimed presence in the United States, are not supported by any corroborative evidence. It is reasonable to expect that the applicant would have some type of contemporaneous evidence to support these assertions; however, no such evidence has been provided. Affidavits from acquaintances are not, by themselves, persuasive evidence of residence or presence.

The applicant has not submitted sufficient credible evidence to establish his qualifying residence in the United States since February 13, 2001. He has, therefore, failed to establish that he has met the criteria described in 8 C.F.R. § 244.2(b) and (c). Consequently, the director's decision to deny the application for temporary protected status will be affirmed.

An alien applying for temporary protected status has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.